

No. 12818

United States
Court of Appeals
for the Ninth Circuit.

SETH J. A. WELDON and DOROTHY WEL-
DON,

Appellants.

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Southern Division.

FILED
MAY 2 1951

PAUL A. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

CLARENCE HARDEN,

CRANDALL CONDRA,

504 San Diego Trust & Savings Bldg.,
San Diego, Calif.

For Appellee:

ERNEST A. TOLIN,

United States Attorney,

BETTY MARSHALL GRAYDON,

Assistant U. S. Attorney,

600 U. S. Post Office & Court House
Bldg.,

Los Angeles 12, Calif. [1*]

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

In the United States District Court in and for the
Southern District of California, Southern
Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SETH J. A. WELDON,

Defendant.

NOTICE OF MOTION

To the United States Attorney:

Please Take Notice that said Seth J. A. Weldon, as petitioner, will move the above-entitled Court, at its Courtroom, in San Diego, California, on Monday, October 23, 1950, at 10:00 a.m., to suppress \$900.00 in currency, one cigarette case, two bills of sale, \$28.51, of which \$28.00 is in currency and 51c in small change, one index card, as evidence in any and all criminal proceedings now pending or hereafter instituted in the above-entitled Court or before the Grand Jury, and that said sum of \$900.00 in currency, said cigarette case, and said two bills of sale be returned to Dorothy Weldon, and that said sums of money aggregating \$28.51 and said index card be returned to petitioner, Seth J. A. Weldon, upon the ground that said property was illegally seized, without a search warrant, in violation of the Fourth Amendment and the authorities listed in the accompanying Points and Authorities, and that there was no probable cause for the [2] issuance of a search warrant.

Said motion will be based upon the accompanying Affidavits of Seth J. A. Weldon and Dorothy Weldon, pursuant to said authorities listed in said Points and Authorities accompanying this Notice.

Dated: October 17, 1950.

/s/ CLARENCE HARDEN,
Attorney for Said Seth J. A.
Weldon, Petitioner.

[Endorsed]: Filed October 17, 1950. [3]

[Title of District Court and Cause.]

**MOTION FOR SUPPRESSION OF EVIDENCE
AND RETURN OF SEIZED PROPERTY**

Seth J. A. Weldon, petitioner, hereby moves the above-entitled Court to direct that certain property, to wit: \$900.00 in currency, one cigarette case, two bills of sale, \$28.51, of which \$28.00 is in currency and 51c in small change, one index card, be suppressed as evidence in any and all criminal proceedings now pending or hereafter instituted, before this court or before the Grand Jury, and that said sum of \$900.00 in currency, said cigarette case and said two bills of sale be returned to Dorothy Weldon, and that said sums of money aggregating \$28.51 and said index card be returned to petitioner, Seth J. A. Weldon, and all of which property was on July 14, 1950, in the City of San Diego, County

of San Diego, State of California, in the Southern Division of the Southern District of California, illegally seized and taken from the possession of petitioner and from the possession of his wife, Dorothy Weldon, by four officers of the F.B.I. of the United States, upon the [4] following grounds:

(1) All of said property was illegally seized and taken from the possession of petitioner and of his wife without any search warrant, without their consent, and against their will;

(2) There was no probable cause for the issuance of any search warrant for said seizure or for the taking of any of said property, all of which appears in the accompanying Affidavits of Seth J. A. Weldon and Dorothy Weldon, to which reference is made for further particulars.

Dated: October 17, 1950.

/s/ CLARENCE HARDEN,
Attorney for Petitioner.

Duly verified.

[Endorsed]: Filed October 17, 1950. [5]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION TO
SUPPRESS EVIDENCE AND FOR RE-
TURN OF SEIZED PROPERTY.

State of California,
County of San Diego—ss.

I, Seth J. A. Weldon, depose and say: On July 14, 1950, at about 6:00 a.m., four officers, who it developed were F.B.I. agents, came to the apartment of myself and wife at 3040½ Adams Avenue, San Diego, California, entered the same, and made a thorough search of the property. At the time they stated they had a warrant for my arrest but that they had no search warrant authorizing them to search the premises. However, they asserted that, incidental to my arrest, they had the right to search the premises.

I know of my own knowledge that one of said officers took from my wife's dresser drawer, among her clothing, a cigarette case containing three \$100.00 bills and twelve \$50.00 bills, a total of \$900.00, the property of my wife, acquired, as I verily believe, under the circumstances set forth in her accompanying affidavit, which I have read and believe to be true. [8]

At that time two bills of sale, the property of Anita Prince and Paul S. Prince, were also taken from the possession of my wife.

All of said property was taken against the will and without the consent of my wife and without my consent.

On said occasion, while in the process of searching said premises, one of said men took from my wallet which was on top of a chest of drawers in the bedroom, the sum of \$28.00 in currency, and also took from the top of the chest of drawers 51c in small change, all of which was my property. At said time said officers also took from the service porch of said premises an index card, about 3 x 5 in. ruled on one side, in the handwriting of my wife, which was my property. Said property was taken without my consent and against my will.

I am informed and believe, and on such information and belief allege that said officers still have in their possession said sum of \$900.00 in currency and said cigarette case, the property of my wife, said bills of sale which were in the lawful custody of my wife, and said sum of \$28.51 and said index card, my property.

/s/ SETH J. A. WELDON.

Subscribed and sworn to before me this 17th day of October, 1950.

[Seal] /s/ SENA W. TITGENS,
Notary Public in and for the County of San Diego,
State of California.

[Endorsed]: Filed October 17, 1950. [9]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION TO
SUPPRESS EVIDENCE AND FOR RE-
TURN OF SEIZED PROPERTY

State of California,
County of San Diego—ss.

I, Dorothy Weldon, depose and say: I married Seth J. A. Weldon in Chicago, Illinois, December 31, 1946, and ever since we have been and now are husband and wife.

On the morning of July 14, 1950, at about 6:00 a.m., four men, who it afterward developed were F.B.I. agents, came to the apartment of my husband, Seth J. A. Weldon, and myself, at 3040½ Adams Avenue, San Diego, rang the doorbell, and after my opening the door, came into my apartment. By said ringing, I was awaked from a sound sleep and went to the door in my nightgown. I purposely omit to give the details of their intrusion into my bedroom and apartment for the reason that I think those matters are probably immaterial at this time.

Later on, and within a few minutes of their arrival as aforesaid, two of said men, whose names are unknown to me, in the absence of my husband and the other two officers who were in the bedroom, came [10] into my livingroom, and one taking one side of the room and the other the opposite, they went through every drawer, every box, opened every piece of linen, turned over chairs and tables, looked under the rugs, took the panels out of the piano

and searched the piano, looked into the radio and phonograph, looked into my personal correspondence box, opened every envelope, personal letters, and otherwise, looked in vases, books and magazines, and then had me move off the couch to check the cushions and inner linings. While they were searching, one of the men left the room and went out into the back yard. At that time the sum of \$900.00 in the form of three \$100.00 bills and twelve \$50.00 bills was in my cigarette case in my bureau drawer among my clothing in the bedroom. When he came back he said that they had found \$900.00 and asked whose it was. They told me that Mr. Weldon said it was mine and started asking me questions for a definite Yes or No on community property and exactly when I put the money away and the amount of it. I told them I put it away at various times but the majority I got from Mr. Sussman. He asked when was the last time I took anything out, and I told him \$100.00 when Seth had his teeth fixed. They continued with a lot of questions and I accused them of putting words in my mouth. This stopped the questioning and they continued with the search on into the kitchen and service porch.

At the time said men came to my apartment at 6:00 a.m. on July 14, 1950, as aforesaid, on inquiry they stated that they had a warrant for the arrest of my husband, Seth J. A. Weldon. They were asked whether they had any search warrant authorizing them to search the premises, and they said they did not but asserted they had a right so to

search the premises incidental to the placing of my husband under arrest.

Said officers took said sum of \$900.00 and said cigarette case from my possession without my consent and against my will; and it is [11] my belief that they still have said money and case. At said time said officers also took from my dresser drawer and from my possession a bill of sale for a 1948 Crosley pickup automobile made out to Anita Prince and also a bill of sale for furnishings made out to Paul S. Prince. Said documents were left in my possession by Mrs. Prince, when she and her husband moved, to be picked up later. Said papers are the property of Mrs. Prince but left in my possession for safekeeping until called for.

As aforesaid, I married Seth J. A. Weldon on December 31, 1946, in the State of Illinois. It is my belief that the laws of Illinois provide that the earnings of a wife are her property free from any interference or claim of the husband, and that the earnings of the husband are likewise privileged, except for ordinary support and maintenance of the wife.

Although my husband and I took residence in California (at San Diego) in November, 1947, we were agreed that we should continue to determine our property under the same terms as if we had continued to reside in the State of Illinois, and we have remained so agreed to date, and intend to remain so agreed.

So that it cannot be said that the \$900.00 in my

possession was obtained by any illegal transfer from my husband, I recite the following facts:

On October 8, 1946, I was possessed of more than \$2100.00 in cash and had a balance of \$12.27 in a checking account. On that date, I purchased 150 shares of capital stock of Associated Models, Inc., from one Melvin S. Sussman, who insisted on cash that date. Accordingly, I wrote a check to Associated Models, Inc., for \$2000.00 (the agreed price) which check Sussman endorsed, whereon I gave him the \$2000.00 in exchange for the check. On October 9, 1946, I deposited the endorsed check and \$50.00 in my checking account. On October 11, 1946, I deposited another \$50.00. [12]

A few days later, being dissatisfied with the value of the stock I had purchased, I paid one David R. Landau, attorney, \$50.00 and on October 20, 1946, he secured Sussman's agreement to repurchase the stock on October 25, 1946. Sussman did not live up to the agreement, and Landau appeared ineffective whereupon I hired Attorney Alexander H. Glick. Glick was to receive one-third of monies collected less the retainer of \$150.00 which I paid him about November 1, 1946. Glick reduced the agreement to \$300.00 cash which I received, and seventeen (17) notes of \$100.00 each, dated December 1, 1946, payable at various times. Sussman eventually paid eight (8) of the notes, of which I received \$600.00 and Glick \$200.00. In other words, after paying out \$200.00 in attorney's fees, I received \$900.00.

In the meantime, about the middle of November,

I believe, I formed a corporation known as Ember Models, Inc., with Seth Weldon, then a friend, and another. I remained engaged in its interests until February 12, 1947. As I remember, I invested \$400.00 and Seth \$900.00. On February 12, 1947, he and I sold our stock at face value, realizing no profit or loss, and I received my \$400.00 back.

In April or May, 1947, I went to work for Louis Supera and Supera-Malmstrom Property Management (a partnership), each of whom paid one-half my total salary of \$45.00 a week, and worked till after Labor Day, 1947, and received therefrom gross salary of \$650.44.

After arriving in San Diego, I worked a few days for the Long Agency and received \$25.00 salary.

In the first part of 1948 I worked for Hooper-Holmes Bureau, Inc., San Diego, and received salary of \$802.86.

In July, 1948, I became employed at Rockgas Service Co., Inc., San Diego, and remained a year, until July 3, 1949, for which I received a salary of \$2012.37. [13]

About August 25, 1948, I began to draw unemployment checks of \$25.00 a week for about a total of nineteen (19) weeks, or a sum total of about \$475.00.

Early in 1949 I had begun the practice of helping my husband with the books of his business in the evening. At the time we were living in a tiny apartment which is part of the store building at 3038 Adams Avenue, San Diego (to be distinguished from the apartment at 3040½ Adams, which is

one-half of a building on the rear of the same lot). In fact, what was supposed to be our parlor doubled for an office in the daytime. After leaving the employ of Rockgas in July, 1949, I began to assume the duties of bookkeeper in my husband's business, known as Weldon's Modern Home Store. Outside of weekly efforts to find another position, I soon found I was spending my entire time in those and related duties.

In January, 1950, I relinquished my claim to unemployment compensation and took up full time employment in my husband's business on the basis of a \$50.00 a week salary, and I remained so employed until the business was closed June 3, 1950.

/s/ DOROTHY P. WELDON.

Subscribed and sworn to before me this 16th day of October, 1950.

[Seal] /s/ SENA W. TITGENS,
Notary Public in and for Said County of San
Diego, State of California.

Receipt of copy acknowledged.

[Endorsed]: Filed October 17, 1950. [14]

AFFIDAVIT OF WILBUR L. MARTINDALE

United States of America,
Southern District of California, Southern Division—ss.

Wilbur L. Martindale, being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned was, a Special Agent of the Federal Bureau of Investigation with headquarters at San Diego.

That on July 14, 1950, accompanied by Special Agents Charles B. Flack, Jr., William J. Geiermann and Ivan D. Haack, he proceeded to the home of Seth J. A. Weldon for the purpose of executing a warrant for the arrest of Weldon, said warrant having been issued by United States Commissioner George R. Baird, San Diego, California, on July 13, 1950, on the basis of a complaint authorized by the United States Attorney and filed by affiant, alleging that on or about June 10, 1950, Weldon knowingly and fraudulently concealed assets from the creditors of his bankrupt estate in violation of Title 18, Section 152, United States Code.

That the four Agents mentioned above arrived at the Weldon home at approximately 6:14 a.m. July 14, 1950. Affiant knocked on the door and at this time Agent Flack was standing behind him; Agents Geiermann and Haack were on the sidewalk or in the yard and were not in the immediate vicinity of the door at this time. Dorothy Weldon opened the door and stood behind the door in such a manner that affiant only saw her face and shoulder. Affiant then stated to her that he was a Special Agent of the Federal Bureau of Investigation and that he held a warrant for the arrest of her husband. Dorothy Weldon informed affiant that her husband was in bed and that she was clad in her nightgown and requested an opportunity to put on

a robe. She was permitted to cross the living room and enter the kitchen before affiant and Agent Flack entered the living room where they paused to give her an opportunity to reach the bedroom. Affiant then proceeded to the kitchen and through the kitchen to the bedroom where he stood in the doorway connecting the bedroom with the kitchen. At this time Agent Flack was behind him and affiant's attention was concentrated on Weldon, who was arising from the bed which was in front of and to the right of the doorway. Affiant believes that Dorothy Weldon was at this time in a clothes [21] closet to the left of the doorway in which affiant was standing, as the next time affiant observed her she was standing by the closet door and was modestly dressed in a long robe.

Affiant informed Weldon that he was under arrest and Weldon then requested permission to telephone his attorney and both Mr. and Mrs. Weldon, affiant and Agent Flack proceeded to the living room where the telephone was located. Agent Geiermann and Haack were already in the living room, not having entered the bedroom. Weldon telephoned his attorney, E. C. Davis, and affiant handed him the warrant of arrest, which Weldon read to his attorney over the telephone, and also advised his attorney that the Agents had stated that they intended to search the house in connection with his arrest although they did not hold a search warrant.

Affiant then talked to Attorney Davis and stated that he believed that money was concealed in Weldon's home and that Weldon's home was to be searched incidental to the arrest and that Weldon

would be taken before the United States Commissioner for arraignment as soon as the Commissioner arrived at this office. Mr. Davis replied that his client had told him that there was no money in the house and that neither he nor his client objected to the search.

Affiant explained to Mr. and Mrs. Weldon that the search would be expedited if two agents searched the living room while the other two agents searched the bedroom. It was further explained that the agents did not wish to make any search unless either Mr. or Mrs. Weldon was present at all times and Mrs. Weldon was asked if she would mind remaining in the living room with Agents Geiermann and Haack while Weldon accompanied affiant and Agent Flack to the bedroom. Mrs. Weldon made no objection and the suggestion was carried out.

Before commencing the search affiant and Agent Flack requested Weldon to show them all of the money in the house. He produced the sum of \$28.51 from his wallet and stated that there was no other money in the house.

Affiant and Agent Flack found a cigarette case in a dresser drawer in the bedroom. Inside this case was the sum of \$900 in currency. When questioned as to the source and ownership of this money, Weldon stated that [22] he knew nothing about it and suggested that the agents ask his wife about it. Affiant left the bedroom and called Agent Haack from the living room to tell him of finding the \$900.

After affiant returned to the bedroom, and in the presence of Agent Flack, Weldon was again asked

the source of the \$900. He replied, "I have seen lots of money—you people know more about it than I do." Still later when asked about the ownership of the \$900, Weldon related that Dorothy Weldon is his second wife and that she has money of her own and that he does not pry into her affairs. He further stated that he assumed that the money belonged to Dorothy Weldon. Weldon later told Agent Haack and affiant that he did not know the \$900 was in the house and did not know whether or his wife had \$900.

The search of the bedroom conducted by affiant and Agent Flack also revealed a bill of sale on the printed form of Nash San Diego, Inc., reflecting the sale of a Crosley automobile to Anita Prince on June 13, 1950. Weldon later stated that the Crosley automobile parked in front of his home was the automobile described in the bill of sale and that he was using the automobile. Subsequent to July 14, 1950, affiant has seen Weldon driving such an automobile on the streets of San Diego.

A 3 x 5 index card was seized by Agents Geiermann and Haack, on which were listed several postal money orders in the total amount of \$500.00. Weldon has since told affiant that these money orders were sent to his mother on June 1, 1950, as repayment of a loan and that he did not list this repayment in his Statement of Affairs because he was embarrassed to have anyone learn that it was necessary for him to borrow money from his mother.

Toward the completion of the search, Weldon told affiant and Agent Flack that he had been

treated in a courteous manner during the search of his house and that he had no complaints to make regarding the conduct of the Agents in his home. Affiant, and the other Agents, conducted themselves in a courteous and gentlemanly manner at all times that they were in the Weldon home and during the time that they were in the presence of Mr. and Mrs. Weldon. Care was taken during the search not to cause disorder or damage. [23]

When leaving the Weldon home, and in the presence of Agent Geiermann, affiant expressed regret to Mrs. Weldon for the necessity of inconveniencing her. She graciously replied that she understood the necessity for the search and that she had not been inconvenienced. She did not at any time express any complaint regarding the conduct of any of the agents.

At no time did either Weldon or Mrs. Weldon express any objection to the search or seizure. After his arraignment and release on July 14, 1950, Weldon asked affiant what action would have been taken if he had objected to or refused to permit the search, affiant replied that inasmuch as the search was legally conducted incidental to Weldon's arrest, such search would have been carried out despite any objections.

Subscribed and sworn to before me this 23rd day of October, 1950.

[Seal] /s/ EDMUND L. SMITH,
Clerk.

By /s/ J. M. HORN,
Deputy Clerk. [24]

AFFIDAVIT OF WILLIAM J. GEIERMANN

United States of America,
Southern District of California,
Southern Division—ss.

William J. Geiermann, being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned was, a Special Agent of the Federal Bureau of Investigation with headquarters in San Diego.

That on July 14, 1950, affiant accompanied by Special Agents Charles B. Flack, Jr., Ivan D. Haack and Wilbur L. Martindale proceeded to the home of Seth J. A. Weldon, 3040 $\frac{1}{2}$ Adams Avenue, San Diego, California, for the purpose of executing a warrant for the arrest of Weldon.

That the four Agents mentioned above arrived at the Weldon home at approximately 6:14 a.m. on July 14, 1950. Agent Martindale, followed by Agent Flack, approached the door while Agent Haack and the affiant remained in a position where they could watch the back door and were not in the immediate vicinity of the front door at that time. Approximately two minutes after Agents Martindale and Flack entered the Weldon home, Agent Haack and affiant entered the house through the front door and remained in the living room. Immediately after Agent Haack and affiant entered the house Weldon, Mrs. Weldon, Agent Flack and Agent Martindale entered the living room from the kitchen and Agent Haack and affiant were introduced to Mr. and Mrs. Weldon as Special Agents of the Federal Bureau of Investigation. At this time, and at all times

while affiant was in the presence of Mrs. Weldon, she was modestly clad in a long robe. Affiant did not at any time enter Mrs. Weldon's bedroom.

Upon entering the living room Weldon telephoned his attorney, and Agent Martindale handed Weldon the warrant of arrest, which Weldon read to his attorney over the telephone. Weldon also advised his attorney that the Agents had stated that they intended to search his house in connection with his arrest although they did not hold a search warrant.

Agent Martindale then took the telephone and stated that he believed that there was money concealed in Weldon's home, and the Weldon's home was to be searched incidental to the arrest, and that Weldon would be taken [25] before the United States Commissioner for arrangement as soon as the Commissioner arrived at his office.

Upon completion of the telephone conversation Agent Martindale explained to Mr. and Mrs. Weldon that the search would be expedited if two Agents searched the living room, while the other two Agents searched the bedroom. Agent Martindale also said that the Agents did not wish to make any search unless either Mr. or Mrs. Weldon was present at all times, and Mrs. Weldon was asked if she would mind remaining in the living room with Agent Haack and affiant, while Weldon accompanied Agents Martindale and Flack to the bedroom. Mrs. Weldon made no objection, and the suggestion was carried out.

In answer to a question by Agent Haack, Mrs. Weldon related that about one week before she

had brought a \$50.00 bill from her bedroom, which was used in a financial transaction with one Leslie Voght. Mrs. Weldon stated that the \$50.00 bill was her money, but that it was the only \$50.00 bill she had.

Mrs. Weldon told Agent Haack in the presence of affiant that at the time of her marriage to Weldon she did not have any money and did not even have proper clothes.

Before starting the search, Agent Haack, in the presence of affiant, asked Mrs. Weldon if there was any money in the house. Mrs. Weldon replied that to her knowledge there was no money in the house, with the exception of a small amount of money in her wallet and a small amount of money in her husband's wallet. Agent Haack and affiant carefully searched the living room, the kitchen and the service porch. The panels were not removed from the piano, although a thorough search was conducted and care was taken to leave the articles searched in an orderly manner and to avoid causing any damage.

In a drawer in a sewing machine on the service porch Agent Haack found a 3x5 index card, which Mrs. Weldon stated was a record of postal money orders totalling \$500.00 which Weldon had mailed to his mother on June 1, 1950, as repayment of \$600.00 borrowed from Weldon's mother in [26] 1947. Mrs. Weldon stated that \$100.00 principal and \$25.00 interest had been paid on this loan before June 1, 1950.

During the conduct of the search Agent Martindale called Agent Haack from the living room. Upon returning to the living room Agent Haack told Mrs. Weldon that a sizable amount of money had been found in the house. Agent Haack did not state any specific amount in this regard. Mrs. Weldon stated that she knew the money was in the house, and Agent Haack asked Mrs. Weldon who owned the money. Mrs. Weldon replied that should would rather have Agent Haack ask Weldon. Mrs. Weldon was asked by Agent Haack to state definitely whether or not the money belonged to Mrs. Weldon, and she was asked to state definitely whether or not the money belonged to Weldon. Mrs. Weldon refused to so state, but she did say that she was Weldon's wife, and that she had always considered "what is mine is his, and what is his is mine."

Mrs. Weldon then related a long, disconnected story as to how, before she was married, she invested \$2,000 with one Melvin Sussman of Chicago, Illinois, and that she had received \$2,000 from Sussman in promissory notes. Mrs. Weldon stated that \$1,100 of these notes had been paid in \$100.00 monthly installments, and that the last money paid by Sussman was received by Mrs. Weldon more than one year ago. Agent Haack asked Mrs. Weldon if the money found in the cigarette case was the same money which Mrs. Weldon obtained from Sussman, and Mrs. Weldon stated that she did not believe it was the same money, as she had taken money out and put money in periodically. At no time did Mrs. Weldon state that the money found

in the cigarette case belonged to her, although she was asked this specific question several times.

At no time did affiant or Agent Haack attempt to put words in Mrs. Weldon's mouth. Agent Haack did attempt to learn from Mrs. Weldon whether the money found in the cigarette case belonged to Mrs. Weldon, to Mr. Weldon or was their joint property. At no time did Mrs. Weldon accuse affiant or Agent Haack of putting words in her mouth.

When leaving the house Agent Martindale expressed regret to Mrs. Weldon for the necessity of inconveniencing her. Mrs. Weldon replied that [27] she understood the necessity for the search and that she had not been inconvenienced.

Affiant and the other Agents conducted themselves in a courteous and gentlemanly manner at all times that they were in the Weldon home, and at all times that they were in the presence of Mr. and Mrs. Weldon. At no time did either Weldon or Mrs. Weldon express any objection to the search or seizure, and at no time did either Mr. or Mrs. Weldon express any objection or complaint regarding the conduct of the Agents.

/s/ WILLIAM J. GEIERMANN.

Subscribed and sworn to before me this 24th day of October, 1950.

[Seal] /s/ EDMUND L. SMITH, Clerk.

By /s/ J. M. HORN,

Deputy Clerk. [28]

AFFIDAVIT OF IVAN D. HAACK

United States of America,
Southern District of California,
Southern Division—ss.

Ivan D. Haack, being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned was, a Special Agent of the Federal Bureau of Investigation with headquarters in San Diego.

That on July 14, 1950, affiant accompanied by Special Agents Charles B. Flack, Jr., William J. Geiermann and Wilbur L. Martindale proceeded to the home of Seth J. A. Weldon, 3040 $\frac{1}{2}$ Adams Avenue, San Diego, California, for the purpose of executing a warrant for the arrest of Weldon.

That the four Agents mentioned above arrived at the Weldon home at approximately 6:14 a.m. on July 14, 1950. Agent Martindale, followed by Agent Flack, approached the door while Agent Geiermann and the affiant remained in a position where they could watch the back door and were not in the immediate vicinity of the front door at that time. Approximately two minutes after Agents Martindale and Flack entered the Weldon home, Agents Geiermann and affiant entered the house through the front door and remained in the living room. Immediately after Agent Geiermann and affiant entered the house Weldon, Mrs. Weldon, Agent Flack and Agent Martindale entered the living room from the kitchen and Agent Geiermann and affiant were introduced to Mr. and Mrs. Weldon as Special

Agents of the Federal Bureau of Investigation. At this time, and at all times while affiant was in the presence of Mrs. Weldon, she was modestly clad in a long robe. Affiant did not at any time enter Mrs. Weldon's bedroom.

Upon entering the living room Weldon telephoned his attorney, and Agent Martindale handed Weldon the warrant of arrest, which Weldon read to his attorney over the telephone. Weldon also advised his attorney that the Agents had stated that they intended to search his house in connection with his arrest although they did not hold a search [29] warrant.

Agent Martindale then took the telephone and stated that he believed that there was money concealed in Weldon's home, and that Weldon's home was to be searched incidental to the arrest, and that Weldon would be taken before the United States Commissioner for arraignment as soon as the Commissioner arrived at his office.

Upon completion of the telephone conversation Agent Martindale explained to Mr. and Mrs. Weldon that the search would be expedited if two Agents searched the living room while the other two Agents searched the bedroom. Agent Martindale also said that the Agents did not wish to make any search unless either Mr. or Mrs. Weldon was present at all times, and Mrs. Weldon was asked if she would mind remaining in the living room with Agent Geiermann and affiant, while Weldon accompanied Agents Martindale and Flack to the bed-

room. Mrs. Weldon made no objection, and the suggestion was carried out.

In answer to a question by affiant, Mrs. Weldon related that about one week before she had brought a \$50.00 bill from her bedroom, which was used in a financial transaction with one Leslie Voght. Mrs. Weldon stated that the \$50.00 bill was her money, but that it was the only \$50.00 she had.

Mrs. Weldon told affiant in the presence of Agent Geiermann that at the time of her marriage to Weldon she did not have any money and did not even have proper clothes.

Before starting the search, affiant, in the presence of Agent Geiermann, asked Mrs. Weldon if there was any money in the house. Mrs. Weldon replied that to her knowledge there was no money in the house, with the exception of a small amount of money in her wallet and a small amount of money in her husband's wallet. Agent Geiermann and affiant carefully searched the living room, the kitchen and the service porch. The panels were not removed from the piano, although a thorough search was conducted and care was taken to leave the articles searched in an orderly manner and to avoid causing any damage. [30]

In a drawer in a sewing machine on the service porch affiant found a 3x5 index card, which Mrs. Weldon stated was a record of postal money orders totalling \$500.00 which Weldon had mailed to his mother on June 1, 1950, as repayment of \$600.00 borrowed from Weldon's mother in 1947. Mrs. Weldon stated that \$100.00 principal and \$25.00 inter-

est had been paid on this loan before June 1, 1950.

During the conduct of the search Agent Martindale called affiant from the living room and told affiant that \$900.00 in currency had been found in a cigarette case in the bedroom.

Upon returning to the living room affiant told Mrs. Weldon that a sizable amount of money had been found in the house. Affiant did not state any specific amount in this regard. Mrs. Weldon stated that she knew the money was in the house, and affiant asked Mrs. Weldon who owned the money. Mrs. Weldon replied that she would rather have affiant ask Weldon. Mrs. Weldon was asked to state definitely whether or not the money belonged to Mrs. Weldon, and she was asked to state definitely whether or not the money belonged to Weldon. Mrs. Weldon refused to so state, but she did say that she was Weldon's wife, and that she had always considered "what is mine is his, and what is his is mine."

Mrs. Weldon then related a long, disconnected story as to how, before she was married, she invested \$2,000 with one Melvin Sussman of Chicago, Illinois, and that she had received \$2,000 from Sussman in promissory notes. Mrs. Weldon stated that \$1,100 of these notes had been paid in \$100.00 monthly installments, and that the last money paid by Sussman was received by Mrs. Weldon more than one year ago. Affiant asked Mrs. Weldon if the money found in the cigarette case was the same money which Mrs. Weldon obtained from Sussman.

and Mrs. Weldon stated that she did not believe it was the same money, as she had taken money out and put money in periodically. At no time did Mrs. Weldon state that the money found in the cigarette case belonged to her, although she was asked this specific question several times. [31]

At no time did affiant or Agent Geiermann attempt to put words in Mrs. Weldon's mouth. Affiant did attempt to learn from Mrs. Weldon whether the money found in the cigarette case belonged to Mrs. Weldon, to Mr. Weldon or was their joint property. At no time did Mrs. Weldon accuse affiant of putting words in her mouth, and affiant stopped asking questions of Mrs. Weldon because she would not give direct answers.

After affiant left the house with Weldon and Agent Martindale, Weldon stated, in the presence of affiant and Agent Martindale, that he had not known the \$900.00 was in the house, and that he did not know whether or not his wife had \$900.00.

Affiant and the other Agents conducted themselves in a courteous and gentlemanly manner at all times that they were in the Weldon home, and at all times that they were in the presence of Mr. and Mrs. Weldon. At no time did either Weldon or Mrs. Weldon express any objection to the search or seizure, and at no time did either Mr. or Mrs.

Weldon express objection or complaint regarding the conduct of the Agents.

/s/ IVAN D. HAACK.

Subscribed and sworn to before me this 24th day of October, 1950.

EDMUND L. SMITH,
Clerk.

By /s/ J. M. HORN,
Deputy Clerk.

[Endorsed]: Filed October 25, 1949. [32]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF OPPOSITION
TO MOTION FOR SUPPRESSION OF
EVIDENCE AND RETURN OF SEIZED
PROPERTY

Affidavit of Charles B. Flack, Jr.

United States of America,
Southern District of California,
Southern Division—ss.

Charles B. Flack, Jr., being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned was, a Special Agent of the Federal Bureau of Investigation with headquarters at San Diego.

That on July 14, 1950, accompanied by Special Agents Wilbur L Martindale, William J. Geiermann and Ivan D. Haack, he proceeded to the home

of Seth J. A. Weldon for the purpose of executing a warrant for the arrest of Weldon.

That the four Agents mentioned above arrived at the Weldon home at approximately 6:15 a.m., July 14, 1950. Agent Martindale knocked on the door and at this time affiant was standing behind him; Agents Geiermann and Haack were on the sidewalk or in the yard and were not in the immediate vicinity of the door at this time. Dorothy Weldon opened the door and stood behind the door in such a manner that affiant only saw her face and shoulder. Agent Martindale then stated to her that he was a Special Agent of the Federal Bureau of Investigation and that he held a warrant for the arrest of her husband. Dorothy Weldon informed Agent Martindale that her husband was in bed and that she was clad in her nightgown and requested an opportunity to put on a robe. Mrs. Weldon disappeared from the front door and since affiant was standing behind Agent Martindale affiant was unable to see where Mrs. Weldon had gone, although the door was slightly ajar. A moment after Mrs. Weldon disappeared from the door Agent Martindale entered the house closely followed by affiant. Affiant did not see Mrs. Weldon at this time. Agent Martindale and affiant paused in the living room and then Agent Martindale led the way through the kitchen to the door connecting the kitchen with the bedroom where Agent Martindale paused in the doorway. Affiant stood behind Agent Martindale and saw Weldon arising from the bed which was in front of and to the right of the doorway. Mrs

Weldon was not in sight. Agent Martindale informed Weldon that he was under arrest and Agent Martindale and affiant entered the bedroom, at which time; affiant noticed that Mrs. Weldon was standing near the closet door to the left of the bedroom doorway. This was the first time that affiant had a full view of Mrs. Weldon or [38] was able to see how she was dressed. Mrs. Weldon was modestly clad in a long robe and wore this robe during the entire time that affiant was in the house.

Weldon then requested permission to telephone his attorney and both Mr. and Mrs. Weldon, Agent Martindale and Agent Flack proceeded to the living room where the telephone was located. Agents Geiermann and Haack were already in the living room, not having entered the bedroom. Weldon telephoned his attorney and Agent Martindale handed him the warrant of arrest, which Weldon read to his attorney over the telephone, and also advised his attorney that the Agents had stated that they intended to search the house in connection with his arrest although they did not hold a search warrant.

Agent Martindale then talked to the attorney but affiant did not hear this telephone conversation for the reason that his attention was concentrated on Weldon.

Agent Martindale explained to Mr. and Mrs. Weldon that the search would be expedited if two agents searched the living room while the other two agents searched the bedroom. It was further explained that the agents did not wish to make any search unless either Mr. or Mrs. Weldon was present

at all times and Mrs. Weldon was asked if she would mind remaining in the living room with Agents Geiermann and Haack while Weldon accompanied affiant and Agent Martindale to the bedroom. Mrs. Weldon made no objection and the suggestion was carried out.

Before commencing the search affiant and Agent Martindale requested Weldon to show them all the money in the house. He produced the sum of \$28.51 from his wallet and stated that there was no other money in the house.

Affiant and Agent Martindale found a cigarette case in a dresser drawer in the bedroom. Inside this case was the sum of \$900 in currency. When questioned as to the source and ownership of this money, Weldon stated that he knew nothing about it and suggested that the agents ask his wife about it. Agent Martindale left the bedroom.

Agent Martindale returned to the bedroom, and in the presence of affiant, Weldon was again asked the source of the \$900. He replied, "I have seen lots of [39] money—You people know more about it than I do." Still later when asked about the ownership of the \$900, Weldon related that Dorothy Weldon is his second wife and that she has money of her own and that he does not pry into her affairs. He further stated that he assumed that the money belonged to Dorothy Weldon.

The search of the bedroom conducted by affiant and Agent Martindale also revealed a bill of sale on the printed form of Nash San Diego, Inc., reflecting the sale of a Crosley automobile to Anita

Prince on June 13, 1950. Weldon later stated that the Crosley automobile parked in front of his home was the automobile described in the bill of sale and that he was using the automobile.

Toward the completion of the search, Weldon told affiant and Agent Martindale that he had been treated in a courteous manner during the search of his house and that he had no complaints to make regarding the conduct of the Agents in his home. Affiant, and the other Agents, conducted themselves in a courteous and gentlemanly manner at all times that they were in the Weldon home and during the time that they were in the presence of Mr. and Mrs. Weldon. Care was taken during the search not to cause disorder or damage.

At no time did either Weldon or Mrs. Weldon express any objection to the search or seizure.

/s/ CHARLES B. FLACK, JR.

Subscribed and sworn to before me this 26th day of October, 1950.

EDMUND L. SMITH,
Clerk.

By /s/ J. M. HORN,
Deputy Clerk.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 26, 1949. [40]

[Title of District Court and Cause.]

AFFIDAVIT OF SETH J. A. WELDON

State of California,
County of San Diego—ss.

Seth J. A. Weldon, being first duly sworn, deposes and says:

He is the petitioner herein. In reply to the statement made in the last paragraph of the Affidavit of Wilbur L. Martindale, as affiant recalls it, he asked Mr. Martindale what would have happened if he had physically objected to or had resisted the making of the search; and it was in reply to that question that Mr. Martindale made the statement that such search would have been carried out despite any objections.

Before the departure of said F. B. I. agents, they presented to affiant a form of receipt, which they requested him to sign, the original of which form of receipt affiant has in his possession and which is in words and figures as follows:

“San Diego, Calif.

“July 14, 1950.

“The following items were taken from the home of Seth J. A. Weldon on this date:

1 cigarette case found in a dresser drawer,
said case containing: [42]

12 x \$50 bills \$600

3 x 100 bills 300

—
\$900

and money contained in Welden's wallet as follows:

2 x \$10	bills	.....	\$20	
1 x 5	bills	.....	5	
3 x 1	bills	.....	3	
1 x .25	coin	.....	.25	
1 x .10	coin	.....	.10	
3 x .05	coin	.....	.15	
1 x .01	coin	.....	.01	28.51
Total.....			\$928.51	

also taken was a bill of sale showing sale of household goods by Weldon to Paul S. Prince on May 23, 1950, and a motor car order dated June 13, 1950, showing sale of a car by Nash San Diego, due to Anita Prince.

W. L. MARTINDALE,
FBI, San Diego.

I certify that except for \$4.00 in my wife's wallet, no other money was found and that except as listed in this receipt, nothing was taken from me."

Affiant refused to sign said receipt in the form it bears but affiant did inform said officers that if they would make two receipts, one for affiant's property, said sum of \$28.51, and one for affiant's wife for said sum of \$900.00, said parties would sign such receipts: Said officers made no reply to that suggestion.

As will be seen from said form of receipt the \$900.00 consisted of twelve \$50.00 bills and three \$100.00 bills, as averred in the original affidavits of petitioner on file herein.

Affiant reiterates that neither he nor his wife consented to the making of said search; nor did they, or either of them, state, either in words or effect, that they had no objection to the making of the search. Said search was decidedly against the will and without the consent of both affiant and of his wife.

Two further circumstances should be stated as indicative of the fact that neither affiant nor his wife did consent to the making of such search.

As soon as Mr. Martindale entered affiant's bedroom and affiant raised himself from his bed, affiant found the necessity of relieving himself and going to the toilet for the purpose of urinating. This he did, and agent Martindale stood beside affiant while he was in the process of urinating in the toilet bowl, and said Martindale kept close watch of all actions and movements of affiant during that act, and he even observed affiant's private parts.

In addition to the search made of the property, as detailed in the original affidavits on file, in support of the motion to suppress and return evidence, said officers made a thorough search of the bathroom of said parties, opening and inspecting every article that was therein, including a box of Kotex, the property of affiant's wife. This box was opened, the contents emptied out, and thoroughly searched for hidden articles therein.

Affiant procured from the office of the United

States Commissioner in San Diego, California, a copy of the Complaint filed against affiant before said officer and a copy of the warrant of arrest issued thereon. A copy of said Complaint and a copy of said warrant are as follows:

“United States District Court for the Southern
District of California Southern Division

“Commissioner’s Docket No. 20

“Case No. 7101

“UNITED STATES OF AMERICA,

vs.

“SETH J. A. WELDON.

“COMPLAINT FOR VIOLATION OF U.S.C.
TITLE 18 SECTION 152

“Before George R. Baird

“Name of Commissioner

“San Diego, California

“Address of Commissioner

“The undersigned complainant being duly sworn states:

“That on or about June 10, 1950, at San Diego in the Southern District of California, (name of accused) the above named defendant did knowingly and fraudulently conceal from the Creditors of the (here insert statement of the essential facts constituting the offense charged) bankrupt estate of Seth J. A. Weldon, doing business as Weldon’s

Modern Home Stores, San Diego, California, property belonging to said bankrupt estate.

“And the complainant further states that he believes that.....are material witnesses in relation to this charge.

“WILBUR L. MARTINDALE,

“Signature of Complainant

“Special Agent, F.B.I.

“Official Title.

“Sworn to before me, and subscribed in my presence, 7-13-50.

“GEORGE R. BAIRD

“United States

Commissioner.”

“District Court of the United States Southern
District of California Southern Division

“Commissioner’s Docket No. 20

“Case No. 7101

“UNITED STATES OF AMERICA,

vs.

“SETH J. A. WELDON.

“WARRANT OF ARREST

“To U. S. Marshal or any other Authorized Officer.

“You are hereby commanded to arrest (here insert name of defendant or description) Seth J. A. Weldon and bring him forthwith before the nearest available United States Commissioner to answer to a complaint charging him with concealing assets of a bankrupt estate from creditors (here describe

offense charged in complaint), in violation of U.S.C. Title 18, Section 152.

“/s/ GEORGE R. BAIRD,

“United States

Commissioner.

“1114 Bank of America
Bldg.

“San Diego 1, Calif.

“1. Here insert designation of officer to whom warrant is issued.”

/s/ SETH J. WELDON,

Subscribed and sworn to before me this 30th day of October, 1950.

[Seal] /s/ SENA W. TITGENS,

Notary Public in and

For said county and state.

[Endorsed]: Filed November 10, 1950.

[Title of District Court and Cause]

AFFIDAVIT OF DOROTHY WELDON

State of California,
County of San Diego—ss.

I, Dorothy Weldon, depose and say: that about 6:00 a.m. on the morning of July 14, 1950, I was awakened by the ringing of the doorbell of my apartment at 3040½ Adams Avenue, San Diego, California, and half asleep jumped up and went to the front door. I opened it in such a way as to shield my body with the door and peered out. Mr. Mar-

tindale, who was previously known to me as an agent of the F. B. I, introduced himself and said "I have a warrant for the arrest of your husband, Mrs. Weldon." I told him Seth was asleep and that I was only dressed in my nightgown, and I requested time to get into some clothing. He said he'd give me three seconds. I ran into the bedroom and over to my husband's side of the bed and shook him. As I looked up Mr. Martindale was standing in the doorway and I stepped away from the bed. Mr. Martindale came into the room and went over to the bed beside my husband as Mr. Flack entered the room and stood just beside the door. Mr. Weldon rose and went into the bathroom with Mr. Martindale right behind him and I asked Mr. Flack if I [46] could dress (I was still in my nightgown). He told me that one of the agents would have to be present at all times, and I got a robe from the closet and slipped it on. Mr. Weldon and Mr. Martindale came back into the bedroom and Mr. Flack started making notes. I asked about these and he told me he was listing the furniture in the room. Mr. Martindale took out some notepaper and started asking Mr. Weldon some questions, his full name, etc. He asked if there was any money in the house and Mr. Weldon and I both produced our wallets. At this time Mr. Weldon went to the bedside table for his glasses and asked for permission to phone his attorney. We all left the bedroom, were introduced to Agents Haack and Geiermann, and Mr. Weldon called Mr. Davis. During the conversation Mr. Martindale asked to talk to Mr. Davis. During the

later part of the telephone conversation with Mr. Davis, I went into the kitchen, followed by one of the agents, to prepare coffee. Mr. Martindale then told us that he and Mr. Flack were going to search the bedroom and that portion of the house and that it was necessary for me to remain with the other two agents while they conducted a search of the livingroom, kitchen and service porch. As soon as Agents Martindale and Flack and Mr. Weldon went into the bedroom and closed the door, Mr. Haack sat down and started asking me questions. (He told me of my rights in the matter.) Mr. Haack showed me an affidavit signed by Leslie Vogt concerning a \$50.00 bill. He questioned me concerning this and I told him I got the bill from my wallet and that it was the only one in my wallet at the time. I considered this the truth since I only removed money as I needed it from the cigarette case which I kept in my dresser drawer. Many questions were asked and one in particular was if I had any money when Seth and I were married. I asked if he meant cash and he nodded, and I told him that at the time I didn't have enough actual cash to buy proper clothes for a wedding since I had just purchased stock in a modeling school. [47] Agents Haack and Geierman then started searching the livingroom in the manner I described in my previous affidavit. The panels of the piano were removed. Agent Haack asked how it was done and I personally got up and showed him. Not only did he take the panel off but he tried every key; one didn't work and I explained that my cat knocked

over a vase and water must have damaged it. Mr. Haack was called out of the room and when he returned he said they had found \$900.00 in a dresser drawer and I answered yes, in my drawer. He then proceeded to question me about this money. Being frightened I did not admit it to be mine right away. I requested that he question Mr. Weldon and leave me alone. He then told me that Mr. Weldon said it was mine after a few seconds I told them it was definitely mine and in answer to their questions, told them about Mr. Sussman and the notes. They took all this information down in detail and I asked if they had a right to take the money and he (Mr. Haack) said yes. They then asked a lot of questions about community property. I told Mr. Haack that he was asking me questions in such a way that it seemed he was putting words in my mouth. He very politely replied that he had no intention of doing such a thing; and then they continued the search into the kitchen and service porch. On the service porch, in a sewing machine drawer, they found a 3 x 5 index card listing money orders sent to Seth's mother in payment of a debt. I told them what it was, and they made out a receipt for me to sign. I told them that I wanted Mr. Weldon to read anything I signed, and they set it aside. We had a little conversation about how long Mr. Weldon and I had been married, and Mr. Haack said that he was under the impression that we were newlyweds. Mr. Martindale, Mr. Flack and Mr. Weldon then came out of the bedroom and were making ready to leave. I wanted Mr. Weldon to

have some breakfast, and they said they would stop on the way. They all left, but were barely out of the door when Mr. Flack and Mr. Geiermann came back in. Mr. Flack told me again of my [48] rights about answering questions; and then he immediately told me that I could be arrested as an accomplice, and that if there was anything I was hiding, or if Seth was hiding anything, now was the time to tell that. It was right then that I started crying. I asked if Seth could be free on bail, and they asked where I could get the money. I told them Mr. Arterburn would help me. Mr. Flack wrote this down, and I asked if they were going to check that too. He did not answer. He asked how we would live now; and I told them I would have to go to work right away. Mr. Flack was very gruff. When I hesitated several times in answering his questions, he said something like, "Come now, surely you know," in a very annoyed manner. In a little bit the phone rang. It was Mr. Martindale calling Mr. Flack. They had already reached their offices, and I asked Mr. Flack to ask Mr. Martindale if Seth had gotten his breakfast. They told me it was being sent up. I was still crying when Mr. Flack and Mr. Geiermann left. Mr. Flack, on leaving, apologised for having inconvenienced me, but Mr. Martindale never did. He says in his affidavit that he did, but he did not. I repeat that the search was not made with my consent. It was decidedly against my will and without my consent. I was in fear and trembling all the time it was going on; and I assumed, from what the officers said and the way

they acted, that there was nothing I could do about it but submit.

/s/ DOROTHY WELDON.

Subscribed and sworn to before me this 30th day of October, 1950.

[Seal] /s/ SENA W. TITGENS,
Notary Public in and for the County of San Diego,
State of California.

[Endorsed]: Filed November 10, 1950.

AFFIDAVIT OF E. C. DAVIS

United States of America,
County of San Diego,
State of California—ss.

E. C. Davis, being first on oath duly sworn, deposes and says that he is a duly licensed and practicing attorney at law in the State of California, and that on the 2nd day of June, 1950, said 2nd day of June being on a Friday, that about the hour of 5:15 o'clock p.m., Seth J. A. Weldon completed the signing of a voluntary petition in bankruptcy, and that the said Seth J. A. Weldon was advised by your affiant that he believed that it was necessary to file voluntary petitions in bankruptcy with the Clerk of the United States District Court in Los Angeles, and that the general practice was to mail said petitions to the Clerk in Los Angeles, and that inasmuch as it was Friday evening, and your affiant did not believe that the Clerk of the District Court

in Los Angeles transacted business on Saturday that it would be Monday, June 5th, before said petition would be filed and an adjudication made.

That on or about the 4th day of July, 1950, at the hour of 6:15 affiant was called to the telephone by his wife and was advised by Seth J. A. Weldon that agents of the Federal Bureau of Investigation were at that moment in his house, and proposed to arrest him, or had arrested him, and he was advised by affiant that there was nothing affiant could do about it at that time in the morning, whereupon the said Seth J. A. Weldon called another party to the telephone who identified himself as Agent Martindale of the Federal Bureau of Investigation. The said party advised your affiant that he had arrested Seth J. A. Weldon and that it would be advisable and go easier on the said Seth J. A. Weldon if he would tell all at that time. [50] Whereupon affiant informed said party that so far as he knew there was nothing to tell. Whereupon the party on the other end of the telephone line stated to affiant that he proposed to conduct a search of the home of Seth J. A. Weldon, and affiant then asked him if he had a search warrant, and was informed that the search was being made incidental to the arrest and that he did not need a search warrant, and that further he would have the said Seth J. A. Weldon in the United States Commissioner's Office at 10 o'clock that morning, and that your affiant could see him at that time. No mention was made by the said party or affiant of money, either in the house or elsewhere, nor was any permission given by affiant

to the said party to conduct any kind of a search or to do anything else, nor did affiant say, either in words or effect, that "neither he nor his client objected to the search."

/s/ E. C. DAVIS.

Subscribed and sworn to before me this 3rd day of November, 1950.

[Seal] /s/ LOUELLA STEINER,
Notary Public in and for
Said County and State.

[Endorsed]: Filed November 10, 1950. [51]

In the United States District Court in and for
the Southern District of California, Southern
Division

(U. S. Com. No. 7101 (San Diego))

In the Matter of the Petition of
DOROTHY WELDON,
Petitioner.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SETH J. A. WELDON,
Defendant.

NOTICE OF MOTION

To the United States Attorney:

Please Take Notice that Dorothy Weldon, as peti-

tioner, will move the above-entitled Court, at its Courtroom, in San Diego, California, on Monday, November 27, 1950, at 10:00 a.m., to return to her the following-described property: \$900.00 in currency; One cigarette case; Bill of sale for Crosley automobile; upon the ground that said property was illegally seized without a search warrant in violation of the Fourth Amendent, and that there was no probable cause for the issuance of a search warrant.

Said motion will be based upon the affidavits which have been filed in the above-entitled Court in support of the motion of Seth J. A. Weldon for the return of said property together with other property covered by his motion, and will be based upon the [52] authorities accompanying the motion of said Seth J. A. Weldon and upon the Brief filed in said matter by him.

Dated: November 14, 1950.

/s/ CLARENCE HARDEN,

Attorney for Dorothy Weldon.

[Endorsed]: Filed November 15, 1950. [53]

[Title of District Court and Cause.]

MOTION TO RETURN SEIZED PROPERTY

Dorothy Weldon, petitioner, hereby moves the above-entitled Court to direct that certain property, to wit: \$900.00 in currency; One cigarette case; One bill of sale for Crosley automobile; be returned to

her, which property was on July 14, 1950, in the City of San Diego, County of San Diego, State of California, in the Southern Division of the Southern District of California, illegally seized and taken from her possession by four officers of the F.B.I. of the United States, upon the following grounds:

1. All of said property was illegally seized and taken from the possession of petitioner without any search warrant, without her consent and against her will, and without the consent and against the will of her husband.

2. There was no probable cause for the issuance of any [54] search warrant for said seizure or for the taking of any of said property, all of which appears in the affidavits filed herein in behalf of the motion now pending of said Seth J. A. Weldon, reference to which is made for further particulars.

/s/ CLARENCE HARDEN,
Attorney for Petitioner,
Dorothy Weldon.

State of California,
County of San Diego—ss.

Dorothy Weldon, being duly sworn, deposes and says: That she is petitioner in the within and above entitled action; that she has read the within and foregoing Motion to Return Seized Property and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information and

belief, and as to those matters that she believes it to be true.

/s/ DOROTHY WELDON.

Subscribed and sworn to before me, this 14th day of November, 1950.

[Seal] /s/ SENA W. TITGENS,
Notary Public in and for said County and State of California.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 15, 1950. [55]

United States of America,
Southern District of California,
Southern Division—ss.

AFFIDAVIT OF CHARLES B. FLACK, JR.

Charles B. Flack, Jr., being first duly sworn, deposes and says:

That on the morning of July 14, 1950, he was in the home of Seth J. A. Weldon as related in affiant's affidavit previously filed in this matter.

At no time did Mrs. Weldon ask the affiant to allow her to dress. Mrs. Weldon was dressed in a robe when affiant first observed her. Affiant did not state to Mrs. Weldon that an agent would have to be present with her at all times.

Affiant did not observe Mrs. Weldon crying. At no time was affiant gruff nor did he speak to Mrs. Weldon in an annoyed manner.

Affiant was present when Agent Martindale offered a receipt to Mr. Weldon. Weldon declined to sign the receipt, stating that it was correct but that he would not sign anything. Weldon did not object to the form of the receipt nor did he suggest any change in the form of the receipt. He did not state that he and his wife would execute receipts if the sum of \$28.51 were listed in a receipt for his signature, and the sum of \$900 listed in a separate receipt for Mrs. Weldon's signature.

/s/ CHARLES B. FLACK, JR.

Subscribed and sworn to before me this 17th day of November, 1950.

[Seal]

EDMUND L. SMITH,

Clerk of U. S. District Court.

By /s/ J. M. HORNE,

Deputy. [59]

AFFIDAVIT OF IVAN D. HAACK

United States of America,
Southern District of California,
Southern Division—ss.

Ivan D. Haack, being first duly sworn, deposes and says:

On the morning of July 14, 1950, as stated in affiant's affidavit previously filed in this matter, affiant was present in the living room of the Weldon home when Seth J. A. Weldon had a telephone conversation with his attorney. Seth J. A. Weldon stated during this conversation that he had

been arrested by Federal Bureau of Investigation Agents and said in effect that his arrest was connected in some manner with some \$1000 bills he was supposed to have. One thousand dollars bills had not previously been discussed with Weldon in the presence of the affiant. After Seth J. A. Weldon concluded his conversation with his attorney, Agent Martindale talked to the attorney on the telephone. Agent Martindale stated in effect that he had arrested Seth J. A. Weldon by reason of a warrant of arrest and that he intended to search the house incidental to the arrest. Agent Martindale also stated in effect that he had reason to believe there was a considerable amount of money in the house and that much time and inconvenience would be saved if Weldon would voluntarily produce that money. At no time during the conversation did Agent Martindale tell the attorney that "it would be advisable and go easier on the said Seth J. A. Weldon if he would tell all at that time."

Affiant reiterates that Mrs. Weldon did not at any time state to the affiant that the money found in the Weldon's bedroom on the morning of July 14, 1950, was her property.

Two identical receipts were prepared for the 3 x 5 inch index card listing money orders totaling \$500 sent to the mother of Seth J. A. Weldon on May 31, 1950, and June 1, 1950. Mrs. Weldon stated she did not wish to sign the receipt without first consulting Seth J. A. Weldon. Later, in the presence of Seth J. A. Weldon affiant again asked Mrs. Weldon if she cared to sign the receipt? Seth J. A. Weldon

then told his wife not to sign anything. Seth J. A. Weldon did not at any time while in the presence of the [60] affiant, object to the form of the receipt or state that he and his wife would sign receipts if they were prepared in some other manner.

/s/ IVAN D. HAACK.

Subscribed and sworn to before me this 17th day of November, 1950.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ J. M. HORN,
Deputy Clerk. [61]

AFFIDAVIT OF WILLIAM J. GEIERMANN

United States of America,
Southern District of California,
Southern Division—ss.

William J. Geiermann, being first duly sworn, deposes and says:

On the morning of July 14, 1950, as stated in affiant's affidavit previously filed in this matter, affiant was present in the living room of the Weldon home when Seth J. A. Weldon had a telephone conversation with his attorney. Seth J. A. Weldon stated during this conversation that he had been arrested by Federal Bureau of Investigation Agents and said in effect that his arrest was connected in some manner with some \$1000 bills he was supposed to have. One thousand dollar bills had not pre-

viously been discussed with Weldon in the presence of the affiant. After Seth J. A. Weldon concluded his conversation with his attorney, Agent Martindale talked to the attorney on the telephone. Agent Martindale stated in effect that he had arrested Seth J. A. Weldon by reason of a warrant of arrest and that he intended to search the house incidental to the arrest. Agent Martindale also stated in effect that he had reason to believe there was a considerable amount of money in the house and that much time and inconvenience would be saved if Weldon would voluntarily produce that money. At no time during the conversation did Agent Martindale tell the attorney [62] that "it would be advisable and go easier on the said Seth J. A. Weldon if he would tell all at that time."

Affiant reiterates that Mrs. Weldon did not at any time state to the affiant that the money found in the Weldon's bedroom on the morning of July 14, 1950, was her property.

Two identical receipts were prepared for the 3 x 5 inch index card listing money orders totaling \$500 sent to the mother of Seth J. A. Weldon on May 31, 1950, and June 1, 1950. Mrs. Weldon stated she did not wish to sign the receipt without first consulting Seth J. A. Weldon. Later, in the presence of Seth J. A. Weldon, Agent Haack in the presence of the affiant again asked Mrs. Weldon if she cared to sign the receipt. Seth J. A. Weldon then told his wife not to sign anything. Seth J. A. Weldon did not at any time while in the presence of the affiant, object to the form of the receipt or

state that he and his wife would sign receipts if they were prepared in some other manner.

Mrs. Weldon was dressed in a robe when affiant first observed her. Affiant did not observe Mrs. Weldon crying. At no time was Agent Flack gruff nor did he speak to Mrs. Weldon in an annoyed manner.

/s/ WILLIAM J. GEIERMANN.

Subscribed and sworn to before me this 18th day of November, 1950.

By /s/ HELEN E. DUNAWAY,
Notary Public, Washington,
D. C. [63]

AFFIDAVIT OF WILBUR L. MARTINDALE

United States of America,
Southern District of California,
Southern Division—ss.

Wilbur L. Martindale, being first duly sworn, deposes and says:

That he was present in the home of Seth J. A. Weldon on July 14, 1950, when Seth J. A. Weldon telephoned his attorney, E. C. Davis, as related in other affidavits filed in this matter.

Seth J. A. Weldon advised E. C. Davis that his arrest involved thousand dollar bills that he was supposed to have in his possession. The substance of Seth J. A. Weldon's statements in this regard was that it had been rumored that he possessed currency in the form of one thousand dollar bills

and that such rumors had been previously discussed between Seth J. A. Weldon and E. C. Davis. Affiant had not discussed any matter involving thousand dollar bills with Seth J. A. Weldon.

When affiant talked to E. C. Davis on the telephone, affiant stated that he had reason to believe that there was a substantial sum of money in the house and that all parties involved could be saved the inconvenience necessitated by a search if Seth J. A. Weldon would produce all money located in his home.

E. C. Davis replied as stated in affiant's prior affidavit that his client had told him there was no money in the house and that neither he nor his client objected to the search.

Affiant did not at any time state in words or in substance that "it would be advisable and go easier on the said Seth J. A. Weldon if he would tell all at that time."

A receipt was prepared in duplicate for the property seized in the bedroom of the Weldon home. Both copies may be described as original documents inasmuch as each was prepared with pen and ink and neither is a carbon copy. The receipt maintained in the files of the FBI is identical with the receipt set out in the affidavit of Seth J. A. Weldon except [64] that the following addendum was placed on this receipt in the presence of Seth J. A. Weldon:

"Weldon was given a copy which he read and said was correct as far as he knew but refused to sign.

WLM

Witness—Charles B. Flack, FBI, San Diego.”

Seth J. A. Weldon stated that he did not wish to sign the above receipt. He did not offer any reason for his unwillingness to sign it and he did not state that he would sign a receipt for his property in the sum of \$28.51 if the sum of \$900.00 were listed on a separate receipt for his wife's signature. Seth J. A. Weldon did not voice any objection to the form of the receipt.

/s/ WILBUR L. MARTINDALE.

Subscribed and sworn to before me this 17th day of November, 1950.

[Seal] EDMUND L. SMITH,
Clerk U. S. District Court, Southern District of
California.

By /s/ J. M. HORN,
Deputy.

[Endorsed]: Filed November 24, 1950. [65]

In the United States District Court, Southern
District of California, Southern Division

No. U. S. Commissioner's
No. 7101 San Diego

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SETH J. WELDON,

Defendant.

MINUTE ORDER

Judge Weinberger's Calendar, December 8, 1950

It appearing that Seth J. A. Weldon filed a petition for the suppression as evidence and the return to him of certain personal property seized by certain officers of the United States Federal Bureau of Investigation on July 14, 1950, and

It appearing that Dorothy Weldon, wife of Seth J. A. Weldon filed a petition for the return to her of certain personal property seized by said officers on said date, and

It appearing that all of the said property was seized by said officers after the same was found in an apartment jointly occupied by said petitioners, and

It appearing that said officers seized said property during a search which was incident to the lawful arrest of Seth J. A. Weldon, made upon the authority of a valid warrant for such arrest, It Is Ordered that the petition of Seth J. A. [66] Weldon is denied; and

It further appearing that petitioner Dorothy

Weldon has not established, to the satisfaction of the Court that the property she seeks to have returned to her was property solely owned by her and in which her husband had no interest, or that the said property was in her possession, as distinguished from the possession of her husband,

It Is Ordered that the petition of Dorothy Weldon is denied.

Copies to counsel.

[Endorsed]: Filed December 8, 1950. [67]

[Title of District Court and Cause.]

EXCEPTION TO RULING

Dorothy Weldon, petitioner in the above-entitled matter, notes and reserves an exception to the ruling and decision of the above-entitled Court denying her application and motion to return to her the following-described property: \$900.00 in currency; one cigarette case; bill of sale for Crosley automobile, as the same appears of record in said proceeding, to which reference is made for further particulars.

Your petitioner, through her attorney, Clarence Harden, received notice of the order and decision of said Court, namely, minute order Judge Weinberger's calendar December 8, 1950, through the United States mail on Saturday, December 9, 1950, at about 11:00 a.m., and not before that time; and December 11, 1950, 10:00 a.m., the time when this exception will be filed with the Clerk of [68] said Court, is and has been the first available opportunity

petitioner has had to note and reserve said exception.

Dated: December 11, 1950.

/s/ CLARENCE HARDEN,
Attorney for petitioner,
Dorothy Weldon.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 11, 1950.

[Title of District Court and Cause.]

EXCEPTION TO RULING

Seth J. A. Weldon, petitioner in the above-entitled matter, notes and reserves an exception to the ruling and decision of the above-entitled Court denying his application and motion to return to him the following-described property: \$900.00 in currency; one cigarette case; bill of sale for Crosley automobile; one index card; (The sum of \$28.51 and bill of sale for furniture having been returned to petitioner by the United States Attorney after the filing of his Petition herein), and an exception to the ruling and decision of said Court denying his application and motion to suppress said property as evidence in any and all criminal proceedings now pending or hereafter instituted in the above-entitled Court or before the Grand Jury, as the same appears of record in said proceeding, to which reference is made for further particulars. [70]

Your petitioner, through his attorney, Clarence Harden, received notice of the order and decision

of said Court, namely minute order Judge Weinberger's calendar December 8, 1950, through the United States mail on Saturday, December 9, 1950, at about 11:00 a.m., and not before that time; and December 11, 1950, 10:00 a.m., the time when this exception will be filed with the Clerk of said Court, is and has been the first available opportunity petitioner has had to note and reserve said exception.

Dated: December 11, 1950.

/s/ CLARENCE HARDEN,
Attorney for petitioner,
Seth J. A. Weldon.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 11, 1950. [71]

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

We hereby substitute and appoint Clarence Harden and Crandall Condra as our respective attorneys in the above-entitled matters in place of Clarence Harden as our sole attorney.

Dated: December 18, 1950.

/s/ SETH J. A. WELDON.

/s/ DOROTHY WELDON.

I consent:

/s/ CLARENCE HARDEN.

We accept:

/s/ CLARENCE HARDEN.

/s/ CRANDALL CONDRA.

Receipt of copy acknowledged.

[Endorsed]: Filed December 18, 1950. [72]

NOTICES OF APPEAL

Names and Addresses of Appellants: Seth J. A. Weldon, Dorothy Weldon, 3040 $\frac{1}{2}$ Adams Avenue, San Diego, California.

Names and Addresses of Appellants' Attorneys: Clarence Harden, Crandall Condra, 530 Broadway, San Diego, California.

Offense:

Complaint filed before U. S. Commissioner charged Seth J. A. Weldon with violation of U. S.

C. A. Title 18, Section 152—fraudulent concealment of assets of bankrupt estate of Seth J. A. Weldon from the creditors of said estate.

No indictment.

No charge against Dorothy Weldon. [73]

Appeal by Seth J. A. Weldon from Order of above-entitled Court, in said matters, made by Hon. Jacob Weinberger, Judge, at San Diego, California, December 8, 1950, wherein the Court denied the petition of said Seth J. A. Weldon to suppress as evidence certain personal property, to wit: \$900.00 in currency, one cigarette case, bill of sale of Crosley automobile, and one index card (the sum of \$28.51 and bill of sale for furniture having been returned by U. S. Attorney pending hearing of his petitions), and appeal from said Order wherein the Court denied his petition for the return of said personal property;

Appeal by Dorothy Weldon from said Order of said Court, dated December 8, 1950, wherein the Court denied the petition of said Dorothy Weldon for the return of said sum of \$900.00 in currency, said cigarette case, and said bill of sale for Crosley automobile; all of which property was seized by certain officers of the U. S. Federal Bureau of Investigation on July 14, 1950.

No sentence has been imposed.

Neither petitioner is confined. Petitioner, Seth J. A. Weldon is on bail fixed by U. S. Commissioner. [74]

I, said Seth J. A. Weldon, hereby appeal to the United States Court of Appeals, for the 9th Circuit, from the above-stated Orders.

I, said Dorothy Weldon, hereby appeal to the United States Court of Appeals, for the 9th Circuit, from the above-stated Orders.

Dated: December 18, 1950.

/s/ CLARENCE HARDEN,

/s/ CRANDALL CONDRA,

Attorneys for Appellants, Seth J. A. Weldon and Dorothy Weldon.

Receipt of copy acknowledged.

[Endorsed]: Filed December 18, 1950. [75]

STATEMENT BY APPELLANTS OF
POINTS ON APPEAL

Each of the appellants, Seth J. A. Weldon and Dorothy Weldon, hereby designates the points on which said appellant intends to rely on appeal herein, as follows:

The Court erred:

1. In finding that the arrest of Seth J. A. Weldon was lawful;

2. In finding that the property in question was lawfully seized incidental to a lawful arrest of Seth J. A. Weldon;

3. In finding that Dorothy Weldon had not established that the property she sought to have returned to her was property solely owned by her and in which her husband had

no interest, or that the property was in her possession, as distinguished from the possession of her husband;

4. In refusing to order the return of said property;

5. In refusing to order the suppression of said property as evidence.

Dated: January 8, 1951.

/s/ CLARENCE HARDEN,

/s/ CRANDALL CONDRA,

Attorneys for Appellants, Seth J. A. Weldon and Dorothy Weldon.

Receipt of copy acknowledged.

[Endorsed]: Filed January 8, 1951. [76]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL BY
SETH J. A. WELDON AND DOROTHY
WELDON

Each of the petitioners, Seth J. A. Weldon and Dorothy Weldon, hereby designates the portions of the record, proceedings and evidence, in the above-entitled matters, to be included in the record on their respective appeals from the Order of December 8, 1950 (being the Judgment) of the United States District Court to the Court of Appeals, to wit:

(Omitting title of court and cause.)

Notice of Motion by Seth J. A. Weldon, dated October 17, 1950.

Motion for Suppression of Evidence and Return of Seized Property by Seth J. A. Weldon, dated October 17, 1950.

Points and Authorities in Support of said Motions.

Affidavit of Seth J. A. Weldon, in support of said Motions, dated October 17, 1950.

Affidavit of Dorothy Weldon, in support of said Motions, dated October 16, 1950. [77]

Affidavits of

- Wilbur L. Martindale, of October 23, 1950;
- William J. Geiermann, of October 24, 1950;
- Ivan D. Haack, of October 24, 1950;
- Charles B. Flack, Jr., of October 26, 1950.

Affidavits of

- E. C. Davis, of October 27, 1950;
- Dorothy Weldon, of October 30, 1950;
- Seth J. A. Weldon, of October 30, 1950.

Affidavits of

- Charles B. Flack, Jr., of November 17, 1950;
- Ivan D. Haack, of November 17, 1950;
- William J. Geiermann, of November 18, 1950;
- Wilbur L. Martin, of November 17, 1950;

being the only affidavits of said affiants made in the month of November, 1950.

Notice of Motion, by Dorothy Weldon, dated November 14, 1950;

Motion to Return Seized Property, by Dorothy Weldon, verified November 14, 1950.

Minute Order, Judge Weinberger's Calendar, December 8, 1950 (being the Judgment).

Exception to Ruling, by Seth J. A. Weldon, dated December 11, 1950.

Exception to Ruling, by Dorothy Weldon, dated December 11, 1950.

Substitution of Attorneys (for petitioners), dated December 18, 1950.

Notices of Appeal (by Seth J. A. Weldon and by Dorothy Weldon).

Designation of Record on Appeal, by Seth J. A. Weldon and Dorothy Weldon.

Statement by Appellants of Points on Appeal.

Dated: January 8, 1951.

/s/ CLARENCE HARDEN,

/s/ CRANDALL CONDRA,

Attorneys for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed January 8, 1951. [79]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 79, inclusive, contain the original Notice of Motion and Motion for Suppression of Evidence and Return of Seized Property; Points

and Authorities in Support of Motion; Separate Affidavits of Seth J. A. Weldon and Dorothy Weldon in Support of Motion to Suppress Evidence, etc.; Opposition to Motion for Suppression of Evidence and Return of Seized Property and Points and Authorities; Separate Affidavits of Wilbur L. Martindale, William J. Geiermann, and Ivan D. Haack; Affidavit of Charles B. Flack, Jr.; Separate Affidavits of Seth J. A. Weldon, Dorothy Weldon and E. C. Davis; Notice of Motion and Motion to Return Seized Property; Supplemental Memorandum of Opposition to Motion for Suppression of Evidence and Return of Seized Property with separate affidavits of Charles B. Flack, Jr., Ivan H. Haack, William J. Geiermann and Wilbur L. Martindale; Minute Order Judge Weinberger's Calendar, December 8, 1950; Separate Exceptions of Dorothy Weldon and Seth J. A. Weldon to Ruling; Substitution of Attorneys; Notices of Appeal; Statement by Appellants of Points on Appeal and Designation of Record on Appeal which constitute the record on appeals to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 22nd day of January, A.D. 1951.

[Seal]

EDMUND L. SMITH,
Clerk,

By /s/ THEODORE HOCKE,
Chief Deputy. [80]

[Endorsed]: No. 12818. United States Court of Appeals for the Ninth Circuit. Seth J. A. Weldon and Dorothy Weldon, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed January 24, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit. [81]

In the United States Circuit Court of Appeals
For the Ninth Circuit

In the Matter of

The SEVERAL PETITIONS of SETH J. A.
WELDON and DOROTHY WELDON,

Petitioners.

CONCISE STATEMENT OF POINTS ON
WHICH APPELLANTS INTEND TO
RELY ON APPEAL

Each of the appellants, Seth J. A. Weldon and Dorothy Weldon, hereby makes the following concise statement of points on which said appellants intend to rely on appeal herein as follows:

The Court erred:

1. In finding that the arrest of Seth J. A. Weldon was lawful;
2. In finding that the property in question was

lawfully seized incidental to a lawful arrest of Seth J. A. Weldon;

3. In finding that Dorothy Weldon had not established that the property she sought to have returned to her was property solely owned by her and in which her husband had no interest, or that the property was in her possession, as distinguished from the possession of her husband; [82]

4. In refusing to order the return of said property;

5. In refusing to order the suppression of said property as evidence.

Dated: January 24, 1951.

/s/ CLARENCE HARDEN,

/s/ CRANDALL CONDRA,

Attorneys for Appellants, Seth J. A. Weldon and Dorothy Weldon.

Receipt of copy acknowledged.

[Endorsed]: Filed January 29, 1951. [83]

